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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/954,682	09/11/2001	Rajesh K. Pankaj	PA789C1	8446
23696	7590	09/02/2005	EXAMINER	
Qualcomm Incorporated Patents Department 5775 Morehouse Drive San Diego, CA 92121-1714			LEE, CHI HO A	
			ART UNIT	PAPER NUMBER
			2663	

DATE MAILED: 09/02/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/954,682

Applicant(s)

PANKAJ, RAJESH K.

Examiner

Andrew Lee

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 September 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-23 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>9/11/01</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Double Patenting

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 1-10, 21-23 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 1, of U.S. Patent No. 6,324,172. Although the conflicting claims are not identical, they are not patentably distinct from each other because claim 1 of U.S. Patent Number 6,324,172 encompasses the limitations of claims 1-9, 21-23 of instant application. Moreover, omission of a reference element whose function is not needed would be obvious to one of ordinary skill in the art. It is well settled that the omission of an element and its functions is an obvious expedient if the remaining elements performs the same function as before *In re Karlson*, 163 USPQ 184 (CCPA 1963). Also note *Ex parte Rainu*, 168 USPQ 375 (Bd. App. 1969).

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-3, 6, 7, 12-17, 20-23 are rejected under 35 U.S.C. 102(b) as being anticipated by Seshadri et al U.S. Patent Number 5,442,625.

Re claims 1, 20-23, figure 4 teaches a frame format 401 (a common channel) for allocating capacity to plurality of users (producers) and includes Uplink section 410 (a first portion) and Downlink Section 415 (a second portion) wherein when the number slots allocated between 410 and 415 are dynamically varied to improve capacity (second portion of the capacity...based at least in part...first portion capacity) depending on demand (See col. 4, lines 19-45).

Re Claim 2, refer to Claim 1, wherein each slot in 401 is at least a basic rate.

Re Claims 3, 7, 17, refer to Claim 1, frame format 401 are assigned a number from 1-to-N wherein the each number "i" assigned to mobile has a fixed relation in time to the start of the slot with 401.

Re claim 6, refer to Claim 1, the number of slots between 410 and 415 are varied based on demand. Furthermore, when $A > 0$, the unused slots are allocated for 415 when 410 are has exceeded it's capacity.

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Re Claims 12, 13, refer to Claim 6, since the capacity is dynamically varied based on mobile demand and the basis rate can equal any number of slots, the slots allocated for the 415 can be allocated subbasic rate or single slot rate or null.

Re Claims 14, 16, refer to Claim 12, the system of Seshadri is slotted. When the basic rate is greater than the capacity of the common channel divided by the number of mobiles, no capacity is available for allocation, hence a null rate.

Re Claim 15, refer to Claim 1, plurality of mobiles (first and second group) are allocated for the uplink capacity and the downlink capacity wherein the rates are dynamically allocated based on demand of the mobiles, i.e., first and second basic rate.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 4, 5, 8, 11, 18, 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent Number 5,442,625.

Re Claims 4, 5, 8, 11, Seshadri fails to explicitly teach "the common channel is the reverse link of a CDMA system". However, it is known that in CDMA/TDD mobile communication system assigns one or more fixed forward link time slots to a plurality of time slots divided at a communication frame at a predetermined interval, and forward

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link time slots and reverse link time slots. Hence, one skilled in the art would have been motivated to frame format in Seshadri in a CDMA/TDD mobile system to bandwidth efficiency, i.e., slots in reverse link can be varied based on demand.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Andrew Lee whose telephone number is 571-272-3130. The examiner can normally be reached on Monday to Friday from 8:30AM to 6:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ricky Ngo can be reached on 571-272-3139. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

ANDY LEE
A1 PATENT EXAMINER
8/29/05

